

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
AARON WISMAN Johnson County, Iowa	NO. 2008-AQ- 27 NO. 2008-SW- 21

TO: Aaron Wisman
47911- 240th Street
Rolfe, Iowa 50581

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Aaron Wisman, for the purpose of resolving solid waste and air quality violations which have occurred at property owned by Aaron Wisman and located in Section 19, T78N, R5W, Johnson County, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Bob Pyle, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, IA 52353
Phone: (319) 653-2135

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part;

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: AARON WISMAN**

and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Aaron Wisman owns property located in Section 19, T78N, R5W, Johnson County, Iowa (the site). On September 5, 2007, the Johnson County Sheriff's Office received an anonymous complaint that improper solid waste disposal and illegal open burning was occurring at the site on a regular basis. The Johnson County Sheriff's Office investigated the site and observed that Mr. Wisman was burning tires. A sheriff's deputy spoke with Mr. Wisman at the site, and Mr. Wisman stated that he had burned tires before. He stated that he was burning the tires to get them off the rims. The sheriff's deputy explained to Mr. Wisman that complaints had been received about the smoke from the fires at the site.

2. On September 28, 2007, Mark Heiderscheit and Bob Pyle of DNR Field Office 6 visited the site to investigate the complaint. On the south side of the barn located at the site, the DNR personnel observed a large burn pile with steel belts from tires, a trailer full of gas tanks, a large pile of chipped wood, and a hole that appeared to be used for the burial of solid waste. DNR personnel attempted to contact the owner by telephone, but the telephone number supplied by the Johnson County Sheriff's Office report was not in service.

3. DNR Field Office 6 sent a September 28, 2007 Notice of Violation letter to Aaron Wisman informing him of the results of the September 28, 2007 investigation and explaining the prohibition against illegal dumping and open burning.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of tires is specifically prohibited. The above facts demonstrate violations of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapter 100.

4. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: AARON WISMAN

disposal project approved by the Director. The above facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, the DNR orders and Mr. Wisman agrees to do the following:

1. Pay a penalty of \$1,000.00 (one thousand dollars) within 30 days of the date from which the Director signs this administrative consent order.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$1,000.00 is assessed. The penalty must be paid within 30 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$1,000.00. The administrative penalty is determined as follows:

Economic Benefit – Aaron Wisman has achieved an economic benefit from open burning and improper waste disposal. He has saved time, labor, and landfill costs by not timely and properly removing, transporting and disposing of the solid wastes from the site. Based on these considerations, \$100.00 is assessed for this factor.

Gravity – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and environment. The open burning of trade waste is specifically prohibited. The violation threatens the integrity of the regulatory program because compliance with the open burning regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: AARON WISMAN

in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Based on the above consideration, \$600.00 is assessed for this factor.


Culpability –Mr. Wisman, has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Therefore, \$300.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Mr. Wisman. For that reason Mr. Wisman waives his rights to appeal this administrative consent order or any part thereof.


VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 12 day of
Sept., 2008.



AARON WISMAN

Dated this 7 day of
Sept., 2008.

Johnson County Air Quality file; Anne Preziosi; Field Office 6; VI.C and VII.C.1.